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EXAMINER	
ALLEN, ANDRE J	
ART UNIT	PAPER NUMBER
2855	

DATE MAILED: 06/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/889,245	Applicant(s) TRACY ET AL.	
	Examiner Andre J. Allen	Art Unit 2855	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Peri d f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *amndt. filed 4-7-03* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15 and 19-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15 and 19-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coe et al in view of Whitehead and further in view of Kitazume. Coe et al teaches the basic features of the claimed invention for example;

In claims 1 and 8 a housing 30, said housing having a proximal end and a distal end{fig. 1} range finding means {col.4 lines 25-40}carried within said housing and oriented so that said range finder directs a beam of light; {col. 4 lines 25-40}

In claims 1 and 8 Coe teaches a housing that directs a beam of light, but does not explicitly teach a window formed on the housing, however it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a window for the purpose of directing a beam of light (MPEP 2144.04).

In Clams 1 and 8 Coe does not teach means for moving range finding means parallel to said window however, Kitazume teaches a system for measuring irregularities in the road that includes a means for moving a laser (col. 7 lines43-45). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide means for moving a range finding means/laser light within a housing as taught by Kitazume in Coe et al for the purpose of moving a laser ray transmitting and receiving section along a frame from one end to the other (col. 1 lines 53-58). In claims 1 and 8 Coe does not teach gripping means being a handle carried by said proximal end of said housing, means carried by said housing in operational connection with a communications port means carried by said handle and tire-engaging means carried by said housing and in operational connection with said range finding means.

Whitehead teaches gripping means 74 being a handle carried by said proximal end of said housing {fig. 11}, means carried by said housing and in operational connection with a communications port means carried by said handle 80 82 84 {fig. 11}, and tire-engaging means 78 carried by said housing {fig. 11} and in operational connection with said range finding means 126 {fig. 1}{abstract}.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the tire profile apparatus taught by Coe et al with gripping means in operational connection with the range finding means as taught by Whitehead for the purpose of having a

portable device to perform a road side tire check (col. 7 lines 9-10), means to engage a side of a tire as taught by Whitehead for the purpose of guiding and maintaining contact with the surface of the tire so that the image window always directly faces the tread (col. 7 lines 25-30), and a communications port as taught by Whitehead for the purpose of sending and receiving tread data.

In claim 2 Coe does not teach a housing having an arcuate edge formed at a proximal and distal end to provide support. However since Coe et al at least has means for supporting a tire {fig. 1}, it would have been obvious to modify a tire support to be arcuate or any other shape with undo experimentation since it appears that the invention would perform equally as well with any shape dealing with tire a support. (MPEP 2144.04)

In claims 3,6 and 14 Coe et al does not teach a communication port carried by a gripping means. Whithead teaches gripping means 74/90 that carries a communication port/processor. Therefore, it would have been obvious to a person modify the tire profile apparatus taught by Coe et that includes a processor/communication port 32 to include a gripper as taught by Whitehead for the purpose of creating a unit that is portable to perform a road side tire check (col. 7 lines 9-10).

In claims 4 and 9 Coe et al teaches a communications port {abstract} 32 that transmits distance data using infrared transmission 30.

In claims 5 and 10 Coe et al does not use radio frequency transmission however, it would have been obvious of to a person having ordinary skill in

the art of transmitting data to use a radio frequency, infrared, or any other form of transmitting a signal since they all ultimately perform the same function.

In claims 7 and 13 Coe et al teaches range finding means {claim 7 ref.} and computer/display 34 but does not teach a hand held computer communication with range finding means having means for plotting distance data. Whitehead teaches a hand held {fig. 11} computer having a display 82 and means for plotting data 84. It would have been obvious to a person having ordinary skill in the art to modify the range finding means and computer taught by Coe et al to include a hand held computer 90 as taught by Whitehead and plot whatever data or dimensions needed as taught by Coe et al {abstract} and Whitehead for the purpose of creating a unit that is portable to perform a road side tire check (col. 7 lines 9-10).

In claim 11 Coe et al being a non-contact apparatus does not teach tire engaging means carried by the proximal end for engaging the side of a tire. Whithead teaches an apparatus that contacts the rolling surface of the tire with the rollers of 78 therefore it would have been obvious to a person in the art of tire analysis at the time the invention was made to engage the surface as taught by Whithead or the side wall for the purpose of maintaining contact, alignment and balance with the surface of the tire so that the image window always directly faces the tread (col. 7 lines 25-30).

In claim 12 Coe et al at least teaches a window that directs a beam of light and analyzes the tread of a tire however, Coe et al nor Whitehead teaches the

window contacting the tread of a tire. It would have been obvious to contact the surface as claimed or non-contact as taught by Coe et al and Whitehead since both of these arrangements are performing the function of analyzing the surface of the tire. (MPEP 2144.04)

2. Claims 15 and 19-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitehead. Whitehead teaches the basic features of the claimed invention for example:

In claim 15 a handheld probe 90, scanning the rolling surface with the probe 90, tire-engaging means 78 engaging a rolling face of the tire (col. 7 lines 19-28), communicating to a computer having a display {fig. 11} and plotting profiles on the display 82. However Whitehead does not teach engaging the side of the tire. It would have been obvious to a person having ordinary skill in the art of tire profiling apparatus's at the time the invention was made to contact any surface/side part of a tire for the purpose of guiding and maintaining contact with the surface of the tire so that the image window always directly faces the tread (col. 7 lines 25-30).

With respect to claims 19,20 determining whether tires comply with government regulations, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use government tire regulations to determine whether they are compliant since it is well known in the tire art that tire manufactures must meet government regulations before they are manufactured or replaced.

In claim 21 Whitehead teaches providing a handheld probe having a handle 74 and a communications port/processor 48 that communicates profiles to a computer 82 84.

In claim 22 Whitehead teaches a communications port that transmits distance data using infrared transmission 41.

In claim 23 Whitehead does not use radio frequency electromagnetic wave transmission however, it would have been obvious of to a person having ordinary skill in the art of transmitting data to use a radio frequency, infrared, or any other form of transmitting a signal since they all ultimately perform the same function and the invention would appear to perform equally well with the data transmission as taught in the cited art.

In claim 24 Whitehead teaches the use of a handheld probe 90 for scanning a tire {fig. 11}.

Response to Arguments

3. Applicant's arguments filed 4-7-03 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., use of the probe while the tier is still on the wheel) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are

not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to the applicants argument that the cited prior art does not teach the light source moving with respect to the probe is clearly taught in Whitehead. Examiner submits that the handheld feature taught by Whitehead allows for this movment.

In response to the applicants arguments, with respect to the type of light used is still taught clearly stated in the cited prior art. Although Each structure takes a different approach to the type of light used and operated it would have been obvious to a person having ordinary skill in the art through undo experimentation to modify how the light is used since this light structure is still performing the function of scanning the profiled of a tire.

In response to applicant's argument that Kitazume is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Kitazume clearly uses carrier means to move a laser system from one end to another. The claimed invention clearly is implementing means for moving the directed beam of light for the same reasons discussed in Kitazume (col. 1 lines 53-58).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre J. Allen whose telephone number is 703-3081989. The examiner can normally be reached on mon-fri 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on 703-305-4816. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-3432 for regular communications and 703-308-3432 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

A.J.A
Art Unit 2855
June 12, 2003

EDWARD LEFKOWITZ
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